

FRED UPTON, MICHIGAN
CHAIRMAN

719

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

IA
Spectrum
Incentive
Auctions

July 14, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Wheeler:

We write with concerns about the commission's upcoming public notice regarding the procedures of the spectrum incentive auction. When Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012, it authorized the FCC to conduct an unprecedented spectrum incentive auction. This auction presents the unique opportunity to create more efficient use of valuable spectrum licenses for the broadband industry and generate revenue for the U.S. Treasury. Since the law was passed, the FCC has taken frequent and prudent steps to keep the participating parties informed, provide adequate time for a well-developed record, and keep the proceedings on track for the auction to begin in early 2016. Unfortunately, in the past week, commission actions threaten this record and the auction itself. The commission can – and should – postpone the vote on the auction procedures public notice to give interested parties and the commission time to develop and analyze the commission's recent data release.

On June 25, 2015, the FCC issued a public notice announcing the tentative agenda for its July commission meeting. Among the items the commission announced it would consider is a public notice on procedure for the upcoming broadcast incentive auction, including "information on final procedures for setting the initial spectrum clearing target, qualifying to bid, and bidding in the reverse and forward auctions."¹ As part of the commission's standard procedure for open agenda meetings, you circulated a draft version of the public notice to your fellow commissioners three weeks prior to the meeting. One week before the meeting, on July 9, the commission issued its "sunshine notice," closing the record for public comment.²

At this point in the proceeding, the commission had followed what is its standard operating procedure with respect to open agenda meetings. However, on Friday, July 10, 2015, the Incentive Auction Task Force inserted into the record significant new data on potential

¹ <https://www.fcc.gov/document/fcc-announces-tentative-agenda-july-open-meeting-2>

² http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0709/DOC-334311A1.pdf

auction outcomes when assigning impairing stations to the 600 MHz band.³ The same day that the Task Force released the simulation data, the commission announced that it would waive the sunshine period prohibition until 7:00 p.m. on Wednesday, July 16, the evening prior to the commission's July 17 open meeting.⁴ Both of these actions are significant departures from commission procedure and raise concerns as to the public's ability to meaningfully comment on the data as well as the ability of the commissioners to vote on the item based on the information gathered.

While it appears from the existing record that the wireless, broadcast, and unlicensed communities had concerns with the commission's plan for the 600 MHz band prior to the release of the new data, stakeholders now find themselves in the unfortunate position of being handed an incomplete document at the 11th hour that lacks the underlying data to support its conclusions. Releasing data of this complexity and importance in such close proximity to the open meeting impairs the ability of the public and industry to provide meaningful and considered feedback to the commission.

To date, there has been significant feedback to the commission on the issues presented in this public notice. The public notice will provide additional information critical to participation in the broadcast incentive auction, including details regarding the potential relocation of broadcasters into the duplex gap, guard bands, and even the wireless broadband portion of the revised 600 MHz band. Establishing the framework and procedures of the auction must reflect careful consideration of the interference potential for both broadcast and wireless license holders in order to maximize auction participation. Reports of the notice and the additional information released thus far do not appear to have accomplished this goal. Locating broadcasters in the broadband portion of the revised band limits the utility and value of the cleared spectrum, potentially depressing auction revenues and threatening the success of the auction.

In addition, the information released by the commission late last Friday shows that the FCC has largely ignored the impact of interference from Mexican and Canadian licensees on U.S. licensees near the borders, despite bipartisan congressional concerns. The committee has repeatedly emphasized how vital it is that the commission adequately addresses the problems of cross-border interference. Without sufficient coordination, many stations – both broadcast and broadband – that are adjacent to the Canadian and Mexican borders could be at risk of substantial interference, significantly reducing the value of the licenses.

Under even the most generous interpretation of the commission's timeline, waiving the sunshine period and closing the record the night before the vote will deprive FCC staff of sufficient time to incorporate the additional public comment that the data dump could generate. However, even if your office has no intention of making changes to the item, the commissioners voting on the item must consider the additional items placed into the record. The revised timeline and additional data placed into the record limits the commissioners' ability to participate during the open meeting or make an informed vote, casting a shadow over an innovative and novel auction that could be this commission's legacy.

³ <http://apps.fcc.gov/ecfs/document/view?id=60001114813>

⁴ http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0710/DOC-334332A1.pdf

The committee has repeatedly emphasized the importance of a fair and open process on all items before the commission, as well as urging the commission to be cognizant of the intent and letter of the law when establishing auction procedures. We urge the commission to remedy this error in process by delaying the commission vote to later date. Doing so would allow for enough time for all parties to conduct a sufficient analysis and ensure an informed final vote.

Sincerely,

A handwritten signature in blue ink, appearing to read "Fred Upton", with a long horizontal flourish extending to the right.

Fred Upton
Chairman
Committee on Energy and Commerce

A handwritten signature in blue ink, appearing to read "Greg Walden", with a long horizontal flourish extending to the right.

Greg Walden
Chairman
Subcommittee on Communications and Technology



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

TOM WHEELER
CHAIRMAN

July 15, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Chairman Walden:

Since Congress, under your leadership, enacted the Spectrum Act in 2012, we have worked together to implement the first-ever incentive auction and to begin this auction in early 2016. Achieving this shared goal will serve the American public by making new low-band spectrum available and contributing to deficit reduction.

As you and I have discussed, the path to the incentive auctions can be complex. I appreciate the kind words in your July 14 letter acknowledging the FCC's management of the incentive auction process. I have also considered closely your request to delay the vote on the order establishing the procedures for auction. In the spirit of cooperation that has marked our work together on the incentive auctions, I am today postponing Commission consideration of this order and the related reconsideration of the mobile spectrum holdings order until the Commission's next regularly scheduled meeting on August 6. I believe that even with this delay we will be able to stay on course for the first quarter of 2016.

I also appreciate the chance to lay out the facts underlying our decision on Friday to release additional data on the effect of various spectrum clearing scenarios on the so-called duplex gap. The data released last Friday was simply a more granular version of the auction simulations data that has been in the public's hands since May. We released it in response to requests by several parties for more detail on the assumptions in those scenarios regarding broadcaster participation, and on the specific markets that would be affected if the auction system assigned stations to the duplex gap. I made the decision to provide it publicly and to all, while simultaneously suspending the sunshine rules so that commenters could provide input. The purpose of releasing the data was to demonstrate to broadcasters and the unlicensed community the *de minimis* impact of the duplex gap option at multiple levels of licensee participation. It is worth noting that the full Commission sought comment on whether the auction system should be able to assign stations to the duplex gap in December 2014, asking specifically about this point as part of our release of proposed auction procedures.

Let me explain why we made this proposal and why I'm recommending that the Commission adopt it. Because we don't know how many stations will participate in the auction until it starts, we need to make provisions for assigning a few stations to the wireless band in case there is insufficient spectrum in the TV band for all of the stations that wish to remain on the air. The question is where in the 600 MHz band they are placed. The data we released in May and augmented last week show that of the 210 television markets in the country, in only about a half dozen would there be a need to consider putting a 6 MHz broadcast licensee in the 11 MHz space between the mobile uplink and downlink. Absent this option, assigning even just a few additional stations to the uplink or the downlink would increase interference to adjacent markets to the extent that an entire 10 MHz block of spectrum would be lost to the auction - an effect that would ripple across the country to significantly reduce the number of broadcast licenses available for purchase and repurposing. This would not only reduce opportunities for broadcasters seeking alternatives for their spectrum and reduce the amount available for new wireless uses, but it would also reduce the revenues available to pay broadcasters by approximately 25 percent, and the revenues for deficit reduction by a similar amount. We believe the simulations and associated data we released last week make clear the importance of preserving the duplex gap option.

Finally, I want to assure you that we have not ignored the potential for interference from Canadian and Mexican stations. To the contrary, discussions are ongoing with officials in both countries and we are optimistic that we will be able to announce agreements soon that will facilitate a successful auction. If we are unable to use the duplex gap in a handful of instances, however, the positive impact of agreements we reach could be significantly reduced.

Moving forward on the Incentive Auction is a national priority for both economic growth and deficit reduction. I remain committed to achieving our joint goal of beginning the auction in the first quarter of 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler

cc: Hon. Frank Pallone
Hon. Anna Eshoo